IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.591 of 2007

Saravanan @ Mandai Saravanan .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Magistrate and
   District Collector,
   Kancheepuram District,
   Kancheepuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER
(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, Saravanan @ Mandai Saravanan, who is the detenu and who was incarcerated by order dated 30.12.2006 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 30.12.2006 in his proceedings No.BDFGISSV No.68/2006 against the petitioner, now confined at Central Prison, Vellore, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

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2. The order of detention dated 30.12.2006 came to be passed based on the ground case said to have taken place on 29.11.2006 at about 9.30 hours, on the basis of the complaint lodged by one Gopinath before the Inspector of Police, Walajabad Police Station. According to the complainant, while he was proceeding in his motor cycle towards Kancheepuram along with his friend Kadhirvel, the detenu herein, waylaid them and demanded money. Threatening the complainant by pressing a knife on the neck of the complainant, the detenu forcibly took a sum of Rs.350/- from the shirt pocket of the complainant. The complainant and his friend tried to catch him, but the detenu picked jalli stones kept on the road side and pelted on them. He also took empty beer bottles kept near the Tasmac shop and hurled it against them. The bottles fell on the road side, broke into pieces and scattered all over the road. By the atrocious activities, he created panic situation and traffic dislocation. A case was registered in Crime No.790 of 2006 on the file of Inspector of Police, Walajabad Police Station under Sections 341, 392, 397, 336 and 506(ii) IPC.

3. The second respondent, taking note of this case as a ground case and finding that there are five adverse cases pending against the detenu for the offences punishable under Sections 379, 457, 380, 394 and 394 r/w 397 IPC, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the order of detention on the ground of non application of mind on the part of the detaining authority while passing the order of detention. According to him, the detaining authority, without taking note of the offence in the adverse cases, opined that there is a real possibility of the accused being released on bail and therefore, the order of detention is liable to be set aside.

5. It is a settled law that when the crime referred to in the adverse case is more grave in nature, there is no real possibility of the accused being released on bail and therefore, the order of detention based on such opinion is vitiated on the ground of non application of mind.

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6. On perusal of the entire materials placed before us, we are satisfied that the detaining authority, even though had stated that the detenu is in remand in connection with the ground case and that there is a likelihood of his coming out on bail after a lapse of time, had not taken into consideration the offence in adverse cases, which is grave in nature, and that there is no possibility of the detenu coming out on bail, before passing the order of detention. Accordingly, the impugned order of detention is quashed on the ground of non application of mind on the part of the detaining authority. The detenu, Saravanan @ Mandai Saravanan is

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directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Secretary to Government
   State of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The District Magistrate and
   District Collector,
   Kancheepuram District,
   Kancheepuram.

3. The Superintendent,
   Central Prison, Vellore.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   of Tamil Nadu,
   Public (Law & Order) Department,
   Fort, St.George, Chennai.9.

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JRG(CO)
RD 19.9.07

H.C.P.No.591 of 2007

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